

REMARKS

Initially, Applicant would like to thank the Examiner for the courtesy extended to Applicant's attorney in a telephone interview on September 18, 2001. During the interview, the outstanding prior art rejection was discussed. In particular, Applicant's attorney noted that the claimed biomass is different than the microfloral composition of Ulken because the presently recited process for making the biomass results in a different product than that of Ulken. Possible claim amendments to more specifically recite the process for making the biomass, for example as the process is claimed in related U.S. Patent No. 5,340,742, were discussed.

The Examiner has maintained the rejection of Claims 38-47 under 35 U.S.C. 103(a) as being unpatentable over Ulken et al. The rejection of Claims 38-47 under 35 U.S.C. 103(a) is respectfully traversed. In particular, the reference does not disclose or suggest culturing the disclosed microflora in a culture medium. The use of a non-chloride sodium salt is a limitation in all the pending claims. Therefore, even if Ulken suggests making a microfloral feed composition from microflora of the order Thraustochytriales, there is clearly no suggestion in Ulken to make such a feed composition having the characteristics that would result from the recited process step. As discussed in the interview, Claim 38 has been amended to more specifically recite the process steps for producing the microflora of the present invention. In view of the foregoing, it is respectfully submitted that all claims are patentable over the Ulken reference. It is respectfully requested that the rejection of Claims 38-47 under 35 U.S.C. 103(a) be withdrawn.

Attached hereto is a marked up version of the changes made to the claims by the current amendment. The attached page is captioned "Version With Markings to Show Changes Made."

During the interview of the September 18, 2001, the Examiner stated that if the basis for distinguishing the present invention from the Ulken reference is the process of making the microflora, the Examiner would institute an obviousness-type double patenting rejection in view of U.S. Patent No. 5,340,742 which could be overcome by an appropriately filed terminal disclaimer.

To expedite prosecution, Applicant hereby submits such a terminal disclaimer, along with the fee required by 37 CFR 1.20 (d).

It is respectfully submitted that all claims are in condition for allowance, and it is respectfully requested that the Examiner pass this application to issue. In the event the Examiner has any questions regarding the patentability of the pending claims, a telephone conference with the undersigned attorney is respectfully requested.

No fees other than the fee for filing the terminal disclaimer are believed to be due in connection with the filing of this Response. In the event that fees are due, please debit Deposit Account No. 19-1970.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: 

Gary J. Connell
Registration No. 32,020
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

Date: 19 September 2001

Version With Markings to Show Changes Made

38 (Once amended) ~~An aquaculture feed composition~~ A biomass comprising microflora selected from order Thraustochytriales wherein said microflora is ~~cultured in a culture medium containing a non-chloride sodium salt as a primary source of sodium ion produced by a process comprising~~ growing said microflora in a culture medium containing less than about 3 grams of chloride per liter of said culture medium, sources of carbon, nitrogen, micronutrients, and a non-chloride sodium salt at a temperature from about 5 °C to about 48 °C.